Supreme Court, U.S.
FILED
FEB 5 1998
CLERK

No. 97-1113

In the

Supreme Court of the United States

October Term, 1997

GRANVILLE AMOS, *et al.*,
Petitioners,

v.

MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For the Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did Congress make unmistakably clear in § 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act an intent to alter the constitutional balance so that these federal acts apply to the core state function of operating state prisons?

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STATEMENT OF THE CASE

Petitioners, thirteen disabled inmates at the Roxbury Correctional Institution ("RCI") in Hagerstown, Maryland, filed this action against the Maryland Department of Public Safety and Correctional Services, RCI, Division of Correction Commissioner Richard Lanham, and RCI Warden Jon P. Galley, seeking injunctive relief and damages under § 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394 (codified at 29 U.S.C. § 794 *et seq.*)(the "Rehabilitation Act") and Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131 to 12165. The plaintiffs alleged that RCI was not handicap-accessible in a number of respects,

thereby limiting their ability to participate in various prison programs and to access or use certain prison facilities. In addition, the prisoners alleged that they were denied needed medical care in violation of the Eighth Amendment.

On January 26, 1996, the district court granted the State's motion for summary judgment on the claims for injunctive relief in light of the Fourth Circuit's decision in *Torcasio v. Murray*, 57 F.3d 1340 (4th Cir. 1995), *cert. denied*, 116 S. Ct. 772 (1996), which granted state prison officials qualified immunity from ADA and Rehabilitation Act claims, and strongly intimated that those statutes do not apply to the operation of state prisons. The district court also subsequently dismissed the medical claims.

On appeal, the Fourth Circuit affirmed, reasoning that the operation of state prisons could not "be subjected to the ADA and the Rehabilitation Act unless there has been a clear and plain statement from Congress permitting federal intrusion into this area of historic state control" and "that Congress has made no such clear statement regarding the application of the ADA and the Rehabilitation Act to state prisons." *Amos v. Md. Dept. of Public Safety & Corr. Services*, 126 F.3d 589, 600-601 (4th Cir. 1997). The Fourth Circuit's decision accorded with the Tenth Circuit's decision in *White v. Colorado*, 82 F.3d 364 (10th Cir.1996) (holding that the ADA and Rehabilitation Act do not apply to state prisons), but was at odds with decisions from the Third and Seventh Circuits, *see Yeskey v. Pennsylvania Dep't of Corrections*, 118 F.3d 168 (3d Cir.1997), *cert. granted*, ___ U.S. ___ (1998)(holding that the ADA and Rehabilitation Act apply to state prisons); *Crawford v. Indiana Dep't of Corrections*, 115 F.3d 481 (7th Cir.1997)(same). The Ninth Circuit subsequently followed the Third and Seventh Circuits in holding that the ADA and Rehabilitation Act apply to state prisons. *Armstrong v. Wilson*, 124 F.3d 1019 (9th Cir. 1997).

REASONS FOR DENYING THE WRIT

THE FOURTH CIRCUIT CORRECTLY DECIDED THE CENTRAL ISSUES IN THIS CASE BY ADHERING TO THIS COURT'S PRECEDENTS

The Court should deny the petition for writ of certiorari because the Fourth Circuit correctly decided this issue, in a thorough and meticulously reasoned opinion. Reviewing and reaffirming its strong *dicta* from *Torcasio*, the court of appeals held that "Congress must make its intention to alter the constitutional balance between the States and the Federal Government unmistakably clear" in its statutory language. *Amos*, 126 F.3d at 594. Management of state prisons, the court reasoned, is an area traditionally reserved to the states, and "Congress failed to speak with unmistakable clarity on the issue of whether the Rehabilitation Act and the ADA apply to state prisons." *Amos*, 126 F.3d at 595-596. The court considered and rejected contentions that the operations of state or local correctional facilities are the types of "programs" or "activities" contemplated by the statutory language of the ADA and Rehabilitation Act. *Amos*, 126 F.3d at 601.

Although this Court has recently granted certiorari in *Yeskey v. Pennsylvania Dep't of Corrections*, 118 F.3d 168 (3d Cir.1997), to decide the applicability of the ADA and Rehabilitation Act to state prisons, it would be proper to deny certiorari in this case because the Fourth Circuit's decision persuasively and faithfully followed this Court's "clear statement" precedents.[1]

The appeals court, reaffirming its *Torcasio* rationale, looked to the well-established rule of statutory construction

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[1] In the alternative, this Court should hold the petition in abeyance pending decision in *Yeskey*.

that, to alter the constitutional balance between the States and the Federal Government, Congress must make that intent unmistakably clear in the statute's language. *Amos*, 126 F.3d at 595. *See Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985); *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 (1984); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). The requirement that Congress leave no doubt about its intent, the Fourth Circuit noted, has unique force "'[i]n traditionally sensitive areas, such as legislation affecting the federal balance'" to ensure that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." *Amos*, 126 F.3d at 604, quoting *United States v. Bass*, 404 U.S. 336, 349 (1971). *See also Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989).

Turning to a different line of this Court's cases, the Fourth Circuit observed that the management of state prisons is, beyond dispute, a core state function. *Amos*, 126 F.3d at 595 (citing *Procunier v. Martinez*, 416 U.S. 396, 412 (1974) (holding that "[o]ne of the primary functions of government is the preservation of societal order through enforcement of the criminal law, and the maintenance of penal institutions is an essential part of that task"), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401, 413-14 (1989)); *Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973) ("It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons."); *see also Turner v. Safley*, 482 U.S. 78, 84-85 (1987); *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981); *Bell v. Wolfish*, 441 U.S. 520, 562 (1979); *Lewis v. Casey*, 116 S. Ct. 2174, 2197 (1996)(Thomas, J., concurring)(stating that the federal judiciary has no authority "to take control of core state institutions like prisons, schools, and hospitals, and assume the responsibility for making the difficult policy judgments

that state officials are both constitutionally entitled and uniquely qualified to make.")

The high degree of deference to state prerogatives in prison management, the appeals court reasoned, "'is in significant measure motivated by the realization that principles of comity and federalism apply with special force in the context of correctional facilities.'" *Amos*, 126 F.3d at 596 (quoting *Torcasio*, 57 F.3d at 1346 (citing *Procunier*, 416 U.S. at 405) ("where state penal institutions are involved, federal courts have ... reason for deference to the appropriate prison authorities") and *Preiser*, 411 U.S. at 492, (the "internal problems of state prisons involve issues [that are] peculiarly within state authority and expertise")).

Scrutinizing the language of the ADA and Rehabilitation Act, the appeals court properly determined that this Court's "closely analogous" decision in *Gregory v. Ashcroft*, 501 U.S. 452 (1991), controlled. In *Gregory*, this Court held that the Age Discrimination in Employment Act (ADEA), despite its express abrogation of the States' Eleventh Amendment immunity, see 29 U.S.C.A. § 630(b)(2) (West 1985), did not apply to state judges because the statute did not unmistakably state its intent to intrude on the core function of state court judicial management.

Similarly, although the ADA and the Rehabilitation Act expressly abrogated Eleventh Amendment immunity, *see* 42 U.S.C.A. § 2000d-7(a)(1); 42 U.S.C.A. § 12202, those acts did not address an intent to intrude into the core state function of state prison management. Just as this Court found that the ADEA did not clearly apply to state judges, *see Gregory*, 501 U.S. at 467 (statute "is sufficiently broad that we cannot conclude that the statute plainly covers appointed state judges"), here the broad coverage of state "programs" and "activities" leaves considerable doubt about Congress's intent to micromanage state prisons. Accordingly, the Fourth Circuit was absolutely correct in "declin[ing] to attribute to Congress an intent to intrude on a core state function in the face of statutory ambiguity."

Amos, 126 F.3d at 605.

CONCLUSION

For the reasons stated, the petition should be denied.

Respectfully submitted,

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